

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 4:22-CR-213-P

DAVID DEVANEY, SR. (01)

DAVID DEVANEY, JR. (02)

GOVERNMENT’S MOTION TO AMEND COUNT EIGHT
OF THE SUPERSEDING INDICTMENT

The government moves the Court to allow the government to amend Count Eight of the superseding indictment to read “K.B.” as opposed to “C.B.” and would show the Court the following. Count Eight of the superseding indictment alleges the decedent’s initials as “C.B.” The decedents actual initials are “K.B.” and her full name is “Kathryn Bryan.”

“The form of an indictment may be amended without return to the grand jury so long as its substance remains the same.” *United States v. Young Bros., Inc.*, 728 F.2d 682, 693 (5th Cir. 1984) *citing Russell v. United States*, 369 U.S. 749, 770 (1962). A misnomer, that is, the misnaming of a person in a legal document, is a mistake of form. *Id.* An amendment of a misnomer is allowed so long as: the defendant’s rights are not affected, he is adequately apprised of the charges against him, and he is protected from surprise.*Id.*

Here, there is only one decedent in the case, and her identity has been known from the case's inception. The defendants have been well apprised of the charges and know the evidence against them. No surprise results from the amendment and the defendants' rights are not affected.

Accordingly, the government respectfully moves the Court to allow the government to amend count eight of the superseding indictment to read "K.B." as opposed to "C.B."

Respectfully Submitted,

CHAD E. MEACHAM
UNITED STATES ATTORNEY

s/ Shawn Smith
SHAWN SMITH
Assistant United States Attorney
Texas Bar No. 24033206
Burnett Plaza, Suite 1700
801 Cherry Street, Unit #4
Fort Worth, Texas 76102
Telephone: 817-252-5200
Facsimile: 817-252-5455
Email: Shawn.Smith2@usdoj.gov

CERTIFICATE OF CONFERENCE

I hereby certify that on October 28, 2022, I conferred with counsels for the defendants and their position are as follows: Counsel for defendant Devaney, Sr. (01) is unopposed to the granting of this motion. Counsel for defendant Devaney, Jr. (02) did not reply with a position on the granting of this motion at the time of filing.

s/ Shawn Smith
SHAWN SMITH
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2022, I electronically filed the foregoing document with the clerk for the United States District Court for the Northern District of Texas pursuant to its electronic filing system (ECF). The ECF sent a “ Notice of Electronic Filing” to the attorneys of record who have consented to accepting service via this method.

s/ Shawn Smith

SHAWN SMITH

Assistant United States Attorney